

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, September 24, 2008, at 6:30 p.m. in Room AC 255/259 of the Waukesha County Administration Center, 515 W. Moreland Blvd., Waukesha County, Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** James Ward, Chairman  
Robert Bartholomew  
Ray Dwyer  
Tom Day

**BOARD MEMBERS ABSENT:** Walter Schmidt

**SECRETARY TO THE BOARD:** Mary E. Finet

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
Eugene Barz, BA08:058, petitioner (buyer)  
Paul Hanson, BA08:060, petitioner (buyer)  
William Groskopf, Groskopf Construction BA08:060, builder  
Matt Heaton, MBH Architects, BA08:060, architect  
John Herrick, BA08:060, neighbor  
Steven Jankowski, BA08:060 neighbor  
Aaron and Sara Kureck, BA08:061, petitioners  
Dr. Robert Prost, BA08:061, neighbor

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use and a taped copy is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Dwyer *I move to approve the Summary of the Meeting of September 10, 2008.*

The motion was seconded by Mr. Day and carried with three yes votes. Mr. Bartholomew abstained because he was not present at the meeting of September 10, 2008.

**NEW BUSINESS:**

**BA08:058 GRANT AND DAREA SCHWARTZ (OWNERS), EUGENE BARZ (BUYER)**

Mr. Dwyer *I move to **approve** the request for variances from the Commercial Truck Parking Conditional Use Standards, as recommended by the staff, subject to the conditions set forth in the Staff Report and for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **approval** of the requested variances from the Commercial Truck Parking Conditional Use Standards set forth in the Waukesha County Zoning Code, to allow Mr. Barz to obtain a Commercial Truck Parking Conditional Use Permit on the property he is proposing to purchase, subject to the following conditions:

1. All conditions placed by the Town of Ottawa Plan Commission and the Waukesha County Park and Planning Commission on their approval of a Commercial Truck Parking Conditional Use Permit must be complied with.
2. The Waukesha County Park and Planning Commission, in conjunction with their approval of the Commercial Truck Parking Conditional Use (File No. CU-1490), has approved the creation of the proposed "flag" lot, but the creation of the proposed "flag" lot must also be approved by the Town of Ottawa Plan Commission. The lot line re-configuration resulting in the proposed "flag" lot must be accomplished by the recordation of a Certified Survey Map. The Certified Survey Map must comply with all requirements of Waukesha County and the Town of Ottawa and must be reviewed and approved by the Town of Ottawa and by the Waukesha County Department of Parks and Land Use - Planning and Zoning Division staff. The Certified Survey Map must be recorded in the Waukesha County Register of Deed's office, prior to the issuance of the Conditional Use Permit.
3. The accessory building that will be used to house the commercial vehicles and equipment must be located in a conforming location.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The Town of Ottawa Plan Commission and the Waukesha County Park and Planning Commission have reviewed the request for a Commercial Truck Parking Conditional Use Permit and have placed conditions on their approval of the Conditional Use Permit to ensure that the use remains compatible with the surrounding area. Therefore, the approval of this request will allow a reasonable use of the property, consistent with the intent of the commercial truck parking regulations, which is in conformance with the purpose and intent of the Ordinance.

**BA08:060 JENNIFER AND BRIAN GRAHAM (OWNERS), PAUL HANSON (BUYER)**

Mr. Day *I move for approval of the staff's recommendation, as stated in the Staff Report, for the reasons given in the Staff Report.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The Planning and Zoning Division staff's recommendation was for **denial** of the requested variances from the offset, floor area ratio, open space, floodplain setback and lateral expansion in C-1 (EFD) Existing Development District requirements of the Waukesha County Shoreland and floodland Protection Ordinance to permit the existing single-family residence and shed to be replaced with the proposed residence and attached garage and deck. However, the Planning and Zoning Division staff recommended **approval** of variances from the floodplain setback and lateral expansion in C-1 (EFD) Existing Development District requirements to permit the existing single-family residence and shed to be replaced with a new single-family residence and attached garage and deck, subject to the following conditions:

1. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system (holding tank) is adequate for the new residence, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
2. All existing structures must be removed from the property.
3. The new residence may not have a basement.
4. The residence and attached garage must conform with the minimum open space requirement of 15,000 sq. ft. This will permit a total building footprint, including the first floor of the residence, the attached garage, and any covered or enclosed porches, of approximately 1,571 sq. ft.
5. The new residence must conform with the minimum floor area requirements of the Waukesha County Shoreland and Floodland Protection Ordinance and the Town of Merton Zoning Ordinance for homes without basements. This will require the residence to have a total floor area of at least 1,300 sq. ft., with a minimum of 900 sq. ft. on the first floor. Further, the new residence must have an attached garage of at least 400 sq. ft.
6. The floor area of the new residence and attached garage must not exceed the maximum permitted floor area ratio of 15%. This will permit a total floor area, including all floors of the residence, the attached garage, any covered or enclosed porches, and any attic storage areas that are accessible from the residence or the garage by any means other than pull-down stairs, of approximately 2,485 sq. ft.
7. The new residence must be no more than three stories when viewed from the lake and its height must be no more than 46 ft., as measured from the lowest exposed point to the highest peak of the roof; no more than 36 ft., as measured from the lowest exposed point to the highest eave; and no more than 27 ft., as measured from the lowest exposed point to the highest floor line. This will be in conformance with the building height requirements set forth in the Waukesha County Shoreland and Floodland Protection Ordinance.
8. The new residence and attached garage must be located in conformance with the offset, road setback and shore setback requirements. This will require the new residence and attached garage to be at least 10 ft. from the side lot lines and at least 50 ft. from the road right-of-way. The new residence must also have a shore setback equal to or greater than the average of the shore setback of the residence on the adjacent lot to the south and the otherwise required minimum shore setback of 75 ft. These dimensions are measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset, road setback and shore setback requirements.
9. Decks or patios adjacent to the new residence will be permitted, provided they do not extend more than 14 ft. from the residence. All decks and patios must be located in conformance with the offset, road setback and shore setback requirements. This will require any decks or patios to be at least 6 ft. from the side lot lines and at least 50 ft. from the road right-of-way. Any decks and patios must

also have a shore setback equal to or greater than the average of the shore setback of the deck on the lake side of the adjacent residence to the south and the shore setback of the paver patio on the lake side of the adjacent residence to the north.

10. No detached accessory structures are permitted.
11. Retaining walls will not be permitted within 75 ft. of the lake or within 5 ft. of the side lot lines.
12. All sidewalks or walkways must be a minimum of 3 ft. from the side lot lines. Only one sidewalk or walkway will be permitted within 75 ft. of the lake. The width of any sidewalk or walkway within 75 ft. of the lake shall not exceed 3 ft.
13. The first floor elevation of the new residence and the floor elevation of the attached garage must be at or above the flood protection elevation of 901.9 ft. above mean sea level (two ft. above the 100-year or regional flood elevation).
14. If the new residence is constructed with a crawl space, the floor of the crawl space must be at or above 899.9 ft. above mean sea level (the 100-year or regional flood elevation).
15. The foundation of the new residence shall be flood proofed and certified as follows. Fill shall be used to elevate the first floor so as to meet the above requirement. The fill shall not be less than one (1) foot below the flood protection elevation and the fill shall extend at such elevation at least fifteen (15) feet beyond the limits of the structure. Where such distance cannot be achieved because of lot lines or other similar constraints, said fill elevation shall extend as far as is practicable resulting in no slope conditions at its terminus that may adversely affect surface water drainage on adjacent properties. In addition, where the fifteen (15) feet of fill cannot be achieved as set forth above, the structure shall be flood proofed to the flood protection elevation, in accordance with the methods set forth herein and shall be certified as such by a Professional Engineer licensed in the State of Wisconsin. Other flood proofing methods designed to the flood protection elevation may be used, as long as they are certified as set forth above. All flood proofing measures shall, at a minimum, provide anchorage to resist flotation and lateral movement, and shall insure that the structural walls and floors are watertight. In order to insure that adequate flood protection measures are taken, a plan or document, certified by a Professional Engineer licensed in the State of Wisconsin, verifying that the proposed flood proofing measures are adequately designed to protect the property to the flood protection elevation, must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
16. The fill area and flood proofing measures required above shall be in accordance with the standards set forth in Section NR 116 of the Wisconsin Administrative Code and FEMA Technical Bulletin 10-01.
17. The construction of the new residence must not impede drainage, reduce the floodwater storage capacity of the floodland, or result in an increase regional flood height, as required by Section NR 116 of the Wisconsin Administrative Code. A Compensatory Analysis must be prepared by a Professional Engineer licensed in the State of Wisconsin to demonstrate that any proposed fill of the floodplain will not impede drainage, reduce the floodwater storage capacity of the floodland, or

raise flood stages by more than 0.01 ft. All calculations must conform to the standards contained in Section NR 116 of the Wisconsin Administrative Code. If the flood stages are increased by more than 0.01 of a foot, compensating storage capacity for the floodplain must be provided on the property in a manner that is not deleterious to other properties or the quality of any waters. This analysis must be performed and certified by a Professional Engineer licensed in the State of Wisconsin and must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.

18. No change in the existing topography or drainage courses on any land will be allowed which will result in adversely altering the drainage or increasing any portion of the existing slope through fill and/or grading to a ratio greater than three (3) horizontal to one (1) vertical. Further, no fill or alterations will be permitted under any circumstances, which will alter the drainage or topography in a way that will adversely affect the surrounding lands.
19. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing grades and proposed grades, in conformance with the above conditions, must be prepared by a registered surveyor or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.
20. North Lake Drive, in the area abutting the subject property, does not meet the standard for dryland access set forth in Section NR 116 of the Wisconsin Administrative Code, which is an elevation above the 100-year or regional flood elevation. Therefore, written documentation from the Town of Merton that they can provide emergency access to the proposed residence in the event of a 100-year or regional flood, must be submitted to the Planning and Zoning Division Staff, prior to the issuance of a Zoning Permit.
21. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
22. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location and elevation of the proposed residence and attached garage, as well as any proposed decks, patios, sidewalks, or walkways, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
23. Upon completion of the foundation of the residence and attached garage, certification shall be obtained from a registered land surveyor that the floor elevations are in conformance with the above conditions. A copy of that certification must be submitted to the Town of Merton Building Inspector and the Planning and Zoning Division staff, prior to proceeding with construction.

24. The property shall be filled in accordance with the approved Grading Plan. Upon completion of the project, an "As-Built" Grading Plan, showing the finished grades on the property must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff. If that "As-Built" Grading Plan indicates that the property has not been filled in accordance with the approved Grading Plan, the grades shall be modified as necessary to bring the property into conformance with the approved Grading Plan.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested offset, floor area ratio and open space variances would not prevent the property from being used for the permitted purpose of single-family residential use, since it already contains a residence and a new residence could be constructed on the property in conformance with the offset, floor area ratio, and open space requirements. In addition, it has not been demonstrated that denial of the requested offset, floor area ratio, and open space variances would result in an unnecessary hardship. Conformance with the offset requirement would permit the construction of a new residence approximately 30 ft. wide. While this is somewhat limiting, it is not unnecessarily burdensome and the proposed residence, which has a maximum width of 32 ft., could be redesigned to meet the offset requirement. Conformance with the open space and floor area ratio requirements would permit a building footprint of approximately 1,571 sq. ft. and a total floor area of 2,485 sq. ft. While this is also somewhat limiting, it is not unnecessarily burdensome. Further, there are no unique property characteristics to justify granting the requested offset, floor area ratio, and open space variances. Therefore, approval of the requested variances from the offset, floor area ratio, and open space requirements, would not be in conformance with the purpose and intent of the Ordinance.

However, since almost the entire lot is within the 100-year or regional floodplain, a hardship exists with respect to the requested floodplain setback variance because a residence in conformance with the floodplain setback requirement could not be located on the property. A hardship also exists with respect to the requested variance to permit a lateral expansion into the floodplain in the C-1 (EFD), Existing Floodplain Development District. Denial of a variance to permit a lateral expansion into the floodplain would limit the footprint of a new residence and attached garage to the footprint of the existing structures, which is approximately 1,244 sq. ft. This would be unnecessarily burdensome and would not permit the construction of a residence in conformance with the minimum floor area requirement of 1,300 sq. ft. and it would not allow for the construction of even a one-car garage. Further, variances should only be granted to provide the minimum relief necessary for a reasonable use of the property. The proposed residence and attached garage, with a footprint of approximately 2,166 sq. ft. exceeds minimum relief and would result in greater filling of the floodplain, which is not in the public interest and is contrary to the purpose and intent of the Ordinance. However, the approval of variances from the floodplain setback requirement and to permit a lateral expansion into the floodplain, as recommended, will result in only a slight lateral expansion into the 100-year or regional floodplain, which will minimize the impact of the new residence on the floodplain and the lake, while still permitting a reasonable use of the property.

Therefore, the approval of variances from the floodplain setback requirement and to permit a lateral expansion into the floodplain in the C-1 (EFD) Existing Development District, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA08:061 AARON S. KURECK:**

Mr. Ward

*I move to **approve** an 8 ft. offset variance, which would permit a detached garage to be located as close as 12 ft. to the west lot line, subject to the following conditions:*

- 1. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property and not drain to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.*
- 2. The detached garage shall have no upper-level storage area, other than an upper-level storage area accessible only via pull-down stairs.*
- 3. Prior to the issuance of a Zoning Permit, a Plat of Survey showing the staked-out location of the proposed detached garage, at least 12 ft. from the west lot line, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.*
- 4. Upon completion of the detached garage, an as-built Plat of Survey must be submitted to the Planning and Zoning Division staff.*

*The reason for granting this offset variance is that it will eliminate the need for additional tree and vegetation removal.*

The motion was seconded by Mr. Bartholomew. The motion failed with two yes votes from Mr. Ward and Mr. Bartholomew and two no votes from Mr. Dwyer and Mr. Day. Since the Board was equally divided, the request for a variance was not approved.

The Planning and Zoning Division staff's recommendation was for **denial** of the requested variances. The reasons for the recommendation, as stated in the Staff Report, are as follows:

A variance requires a demonstration that denial of the variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested offset variance would not prevent the property from being used for the permitted purpose of single-family residential use, since it already contains a residence and an attached garage. In addition, it has not been demonstrated that denial of the requested offset variance would result in an unnecessary hardship. A smaller detached garage, in nearly the same location relative to the existing driveway, could be located in conformance with the minimum required 20 ft. offset from the west lot line. However, even if no conforming location existed for any detached garage, the property already contains a three-car attached garage. Therefore, it would not be unnecessarily burdensome to deny a variance to permit an additional detached garage. Further, while the petitioner may desire to construct a 30 ft. deep garage in which to store his 28 ft. pontoon boat, such a garage is not a necessity and a finding of unnecessary hardship may not be based on circumstances that are personal to the property owner. Therefore, the approval of an offset variance to permit the construction of the proposed detached garage would not be in conformance with the purpose and intent of the Ordinance.

#### **ADJOURNMENT:**

Mr. Day *I move to adjourn this meeting at 9:00 p.m.*

The motion was seconded by Mr. Dwyer and carried unanimously.

Respectfully submitted,

Mary E. Finet  
Secretary, Board of Adjustment